

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAVIER CORREIA a/k/a MIGUEL ROMAN,

ORDER

05 CV 2006 (GBD) (MHD)

Plaintiff,

-against-

JOHN DOES ## 1-6, et al.,

Defendants.
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GEORGE B. DANIELS, DISTRICT JUDGE:

Pro se plaintiff Javier Correia filed a motion, dated March 10, 2006, for default judgment against the single identified defendant in this action.

This matter was referred to Magistrate Judge Dolinger for a report and recommendation ("Report"). Magistrate Judge Dolinger issued a Report wherein he recommended that default judgment in favor of plaintiff be denied. In his report, Magistrate Judge Dolinger advised the parties that failure to file timely objections to the report will constitute a waiver of those objections. Neither party filed objections to the Report and the time to do so has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

Where there are no objections, the Court may accept the Report provided there is no clear error on the face of the record. Nelson v. Smith, 618 F.Supp. 1186, 1189 (S.D.N.Y. 1985); see also, Heisler v. Kralik, 981 F.Supp. 830, 840 (S.D.N.Y. 1997), aff'd 164 F.3d 618 (2d Cir. 1998). After reviewing the Report, the Court finds that the record is not facially erroneous.

Plaintiff filed his complaint on February 4, 2005. On September 28, 2005, plaintiff was granted an extension of time, to October 30, 2005, to serve the complaint on the one identified defendant. The identified defendant was served on January 6, 2006. Magistrate Judge Dolinger then directed the New York City Law Department to advise whether the identified defendant

requested representation. Counsel responded within a few days and requested that the identified defendant's time to respond to the complaint be extended to March 9, 2006. Magistrate Judge Dolinger granted that request.

The identified defendant served and filed an answer in a timely fashion.


Plaintiff prepared a default judgment motion on March 10, 2006, and mailed it to the Court. Plaintiff submitted that a default judgment should be entered in his favor because defendant failed to answer the complaint by the deadline of March 9.

As defendant answered in a timely fashion, there is no basis for entry of a default judgment.

Accordingly, the Court adopts the recommendation in its entirety. Plaintiff's motion for a default judgment is denied.

Dated: New York, New York
April 10, 2006

SO ORDERED:



GEORGE B. DANIELS
United States District Judge